

STATE OF MICHIGAN
COURT OF APPEALS

GERALD GAZDA,

Plaintiff-Appellant,

v

DETROIT ENTERTAINMENT L.L.C., d/b/a
MOTOR CITY CASINO,

Defendant-Appellee.

UNPUBLISHED

June 16, 2005

No. 254334

Wayne Circuit Court

LC No. 02-217318-NO

Before: Gage, P.J., and Whitbeck, C.J., and Saad, J.

PER CURIAM.

Plaintiff Gerald Gazda appeals as of right from an order of judgment of no cause of action. Gazda sued Detroit Entertainment, L.L.C., after being detained at one of their casinos on suspicion of playing a malfunctioning slot machine. We affirm.

I. Basic Facts And Procedural History

This case arises out of a gaming dispute that occurred on January 29, 2002. That day, Gazda had been playing nickel slot machines at the Motor City Casino. According to Gazda's testimony, he had been playing two or three nickel slot machines simultaneously, and he was winning money on all three machines. Gazda was using "player club cards" in the machines, which enable the machines' computers to determine whose cards were being played on which machine at a given time. Gazda noticed that he was winning on one of the machines on which he was playing. At one point, he told the person playing the machine next to his, Thomas Martin Fualayter, that the machine Gazda was playing was "favorable."

When Gazda attempted to cash out from one of the machines, the machine did not return his full payout and a flashing light on top of the machine turned on, which he understood to mean that the machine needed to be refilled in order to complete his payout. Gazda testified that he then moved to play the next machine while waiting for one of Detroit Entertainment's employees to fill the empty machine so that he could get the remainder of his payout.

Terry Mayfield, Detroit Entertainment's slot attendant, testified that he went to the nickel slot machine to fill the hopper and noticed from an access log that there had been several hopper fills within a short period of time. Mayfield called David Serafini, Detroit Entertainment's slot manager, to inform that the machine was malfunctioning. The machine would improperly return

fifteen coins for every ten coins put into the machine. Patrick Kelly, Detroit Entertainment's slot technician, then came, opened up the machine, and conducted a test of the machine. While Kelly was testing the machine, Gazda became belligerent toward Kelly, yelling and accusing Kelly of taking coins that belonged to him. Gazda admitted that he was drunk and upset and, as a result, swore at Kelly.

At this point, a casino employee accused Gazda of cheating on the slot machine, then instructed him to follow the security officers. Seeing the number of security officers surrounding him, Gazda agreed to cooperate and be escorted to the security office. Surveillance cameras recorded this process on videotape, and an edited portion of this videotape was later shown at trial. According to Gazda, while being escorted by Detroit Entertainment's security officers, he reached into his pocket for a cigarette but then accidentally dropped the cigarette on the floor. Gazda claimed that when he bent down to pick up the cigarette, one of the security officers hit him on the side of his face. Gazda was then handcuffed and brought to the security office. Gazda admitted that, once in the security office, he was upset at having been detained, assaulted and handcuffed, and he began cursing. Gazda alleged that officers left him shackled to the floor for a number of hours.

According to security officers Christina Shell, Matthew Richmond, and Gloria Brown, Gazda kept putting his hands in his pockets while they took him to the interview room, despite their request that he keep his hands out of his pockets for their protection. When Gazda dropped his cigarette, Officer Shell stepped on it, then Gazda kicked her feet, attempted to trip her, and bumped her with his upper body. At this point, the officers handcuffed Gazda because he was intoxicated, verbally abusive, and disorderly, and his behavior was threatening. When officers patted Gazda down, they found a knife in his pocket. Officers Shell and Richmond denied that any officer had hit Gazda in the face, and also stated that after Gazda arrived in the interview room, they took off his handcuffs.

In the interview room, Detective Frank Little explained to Gazda that he had violated a criminal provision of the Michigan gaming statute that prohibits a person from knowingly playing a malfunctioning slot machine. Detective Little gave Gazda *Miranda*¹ warnings and interviewed him. Detective Little also interviewed Thomas Martin Fualayter, Serafini, Kelly and Mayfield. Detective Little testified that, based on his interviews, he believed that there was probable cause to arrest Gazda for knowingly taking advantage of a malfunctioning slot machine. Gazda was restrained in the security office for approximately one hour and was permanently banned from Detroit Entertainment's casino.

Gazda filed a complaint against Detroit Entertainment alleging assault and battery, false arrest and false imprisonment resulting from Gazda's detention by Detroit Entertainment's casino personnel, and punitive damages.² Detroit Entertainment filed a motion for summary

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

² Gazda later amended the complaint to include claims relating to a subsequent arrest on an outstanding warrant; however, the circuit court granted summary disposition of these claims.

disposition of Gazda's complaint in its entirety pursuant to MCR 2.116(C)(8) and (C)(10). After a hearing, the trial court granted the motion with respect to Gazda's claims of assault and battery and request for punitive damages. Gazda's claims of false arrest and false imprisonment were tried to a jury.

At trial, Gazda testified that he was unaware that the slot machine that he had been playing was malfunctioning until the state of Michigan police trooper told him, and he specifically denied knowing that the machine was overpaying. Gazda admitted that, while at the machine, he informed Detroit Entertainment's employees that the machine was "favorable" which, to Gazda, meant that he was winning money on it.

However, Fualayter testified that, when he sat down next to Gazda at the nickel slot machines, Gazda told him that he was going to cash out and, if Fualayter was willing to give him his machine back, Gazda would allow Fualayter to play the machine while Gazda was gone. Fualayter testified that Gazda told him that the machine was overpaying. Fualayter testified that he did play Gazda's machine and that he was overpaid.

After deliberating, the jury returned a verdict finding that Detroit Entertainment had probable cause to believe that Gazda had committed a crime. The jury, however, ignored both the verdict form and the trial court's instructions by also answering other questions on the form. The trial court sent the jury back to the jury room to return a verdict in compliance with the verdict form. The jury then returned a verdict of no cause of action.

II. Evidentiary Matters

A. Standard Of Review

We review preserved evidentiary issues for an abuse of discretion and unpreserved evidentiary issues for plain error affecting a party's substantial rights.³

B. Jury's Request To Review Evidence

Gazda argues that the trial court erred in denying the jury's request to review evidence regarding the use of a player's club card. However, Gazda's counsel expressly acquiesced to the trial court's decision to refuse the jury's request. Therefore, Gazda waived any claim of error with regard to this issue.⁴

³ *Hilgendorf v St John Hosp and Medical Center Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001).

⁴ See *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001); *Weiss v Hodge (After Remand)*, 223 Mich App 620, 636; 567 NW2d 468 (1997).

C. Admission Of Edited Videotape

Gazda argues that the trial court erred in allowing the jury to view only the edited portion of the surveillance videotape in the courtroom in the presence of non-jury members. Specifically, Gazda asserts that the entire original videotape, rather than the videotape edited by Detroit Entertainment's technician, should have been submitted to the jury for its evaluation and the court subjected the jury to intimidation by allowing it to view the videotape in the presence of non-jury members.

However, Gazda's counsel expressly agreed to show only an edited portion of the three-hour tape at trial. The record further indicates that, during deliberations, the jury requested to review only one portion of the videotape. Gazda's counsel not only did not object, but also expressly agreed with the court's decision to show only the requested portion of the videotape to the jury. Moreover, Gazda's counsel expressly approved the trial court's decision to have the jury view the videotape in the courtroom with the attorneys present unless the jury requested to view it in the jury room, which they did not. Under these circumstances, we conclude that Gazda waived any claim of error respecting this issue.⁵

D. Admission Of Testimony Regarding Garza's Prosecution

Gazda contends that the trial court erred in allowing testimony regarding Gazda's criminal prosecution while denying Gazda's request to testify that these charges were dismissed for insufficient evidence. The issue is not preserved for appellate review, as it was not raised before or addressed by the trial court.⁶ We review unpreserved claims for plain error affecting a party's substantial rights.⁷

At trial, Detective Little testified that he gave the Attorney General's Office his report and a request to issue a warrant for Gazda's arrest, but there was no testimony regarding the subsequent decision of the prosecution to charge Gazda. Even if Gazda had been able to establish that allowing this testimony constituted plain error, he would have been unable to show that this error affected his substantial rights. The trial court specifically instructed the jury with regard to Little's testimony: "You are not to concern yourselves during your deliberations with any criminal charges, as those criminal charges are irrelevant to the issues to be decided." Jurors are presumed to understand and follow the court's instructions.⁸ Therefore, we conclude that this instruction cured any error that may have occurred by admitting Little's testimony, and reversal is not warranted.⁹

⁵ See *id.*

⁶ *Jerico Construction v Quadrants, Inc.*, 257 Mich App 22, 35 n 6; 666 NW2d 310 (2003).

⁷ *Hilgendorf*, *supra* at 700.

⁸ *Bordeaux v Celotex Corp.*, 203 Mich App 158, 164; 511 NW2d 899 (1993).

⁹ See *People v McAlister*, 203 Mich App 495, 504; 513 NW2d 431 (1994).

III. Jury Instructions

A. Standard Of Review

We review claims of instructional error de novo, examining the jury instructions as a whole to determine whether there is error requiring reversal, and reversing only if failure to do so would be inconsistent with substantial justice.¹⁰

B. Plain Error Review

Gazda argues that the jury did not understand the jury instructions. Because Garza failed to object to the instructions at trial, he failed to preserve his argument for appeal.¹¹ We review unpreserved claims for plain error that affected substantial rights.¹²

Here, Gazda does not identify any specific error in the jury instructions or explain how or why the jury instructions were erroneous. Where a party merely announces a position and provides no authority to support it, we consider the issue waived.¹³ In any event, having viewed the instructions as a whole, we conclude that they adequately and fairly apprised the jury of the law and the parties' theories.¹⁴ Because no plain error is apparent from our review of the record, reversal on this ground would not have been warranted even if the issue had not been waived.¹⁵

C. Jury Nullification

Gazda also argues that the jury's initial verdict constituted "jury nullification." Jury nullification is a concept applied in criminal cases, and it is defined as "the power [of the jury] to dispense mercy by nullifying the law and returning a verdict less than that required by the evidence."¹⁶ Gazda bases his claim on the fact that the jury initially returned a verdict finding that Detroit Entertainment had probable cause to believe that Gazda had committed a crime, but, despite having been instructed not to do so, also answered other questions on the verdict form. The foreman explained that the jury believed that "there was fault on both sides," so they felt compelled to answer other questions. Only after the trial court directed the jury to return a verdict in compliance with the verdict form did the jury return a properly executed verdict form indicating that probable cause existed, and that Garza therefore had no cause of action.

¹⁰ *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

¹¹ *Leavitt v Monaco Coach Corp*, 241 Mich App 288, 300; 616 NW2d 175 (2000).

¹² *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

¹³ See *Mudge v Macomb Co*, 458 Mich 87, 104-105; 580 NW2d 845 (1998); *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001).

¹⁴ *Case*, *supra* at 6.

¹⁵ *Kern*, *supra* at 336.

¹⁶ *People v Demers*, 195 Mich App 205, 206; 489 NW2d 173 (1992).

Gazda does not cite any legal authority in support of his position, nor has our research revealed any. As noted, when a party merely announces a position and leaves it to this Court to discover and rationalize the basis for the claim, we consider that claim waived.¹⁷

Affirmed.

/s/ Hilda R. Gage
/s/ William C. Whitbeck
/s/ Henry William Saad

¹⁷ See *Mudge*, *supra* at 104-105; *Eldred*, *supra* at 150.